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**BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**

In Re: JOSHUA C. CAIN,
a member of The West Virginia State Bar

Bar No.: 11507
I.D. No.: 18-03-527

STATEMENT OF CHARGES

To: Joshua C. Cain, Esquire
Post Office Box 811
Moundsville, West Virginia 26041

YOU ARE HEREBY notified that a Hearing Panel Subcommittee of the Lawyer Disciplinary Board will hold a hearing pursuant to Rules 3.3 through 3.16 of the Rules of Disciplinary Procedure, upon the following charges against you:

1. Joshua C. Cain (hereinafter "Respondent") is a lawyer who practices in and around Moundsville, which is located in Marshall County, West Virginia. Respondent was admitted to The West Virginia State Bar on April 26, 2011, after successful passage of the Bar Exam. As such, he is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

Count I
Complaint of Dana F. Eddy, Esquire
18-03-527

2. On November 20, 2018, Dana F. Eddy, Esquire, Executive Director for the Public Defender Services of West Virginia (hereinafter “PDS”) filed an ethics complaint regarding Respondent with the Office of Lawyer Disciplinary Counsel (hereinafter “ODC”).
3. During the relevant time period, Respondent was a panel attorney whose invoices for payment were processed by the PDS.
4. In his complaint, Mr. Eddy stated that on or about August 31, 2017, he received an email from the Honorable Jeffrey Cramer, Judge for the Second Judicial Circuit, explaining that Respondent had delivered to him 85 vouchers for payment with a proposed Order Approving Payment of Appointed Counsel Fees and Expenses for each voucher. Most of the vouchers concerned matters for which a final disposition had been made eight to ten months before.
5. A relevant provision within the governing statute states, “[C]laims submitted more than ninety calendar days after the last date of service shall be rejected, unless for good cause, the appointing court authorizes in writing an extension, W.Va. Code § 29-21-13a(a).
6. In many of the vouchers, Respondent included a recent “review file” description to cover for the last date of service being well outside of the ninety-day calendar period of time.

7. Judge Cramer's predecessor, the Honorable Mark A. Karl, returned vouchers to Respondent in 2013 as being excessive billing, and Respondent apparently did not bill for any other matters in Marshall County until Judge Karl left the bench.
8. Judge Cramer noted that he found "numerous issues" in the billing, including but not limited to claiming an unreasonable amount of time opening, reviewing, and closing files, at least one instance of billing for a hearing that there was no evidence of having occurred, billing 1.5 hours of travel time to every Marshall County proceeding, when Respondent resided in Moundsville, and outrageous copying expenses.
9. PDS representatives subsequently traveled to the Marshall County Courthouse to review the vouchers. Upon review, they reported significant concerns, and referred the matter to the Committee on Special Investigations, who conducted an independent investigation.¹
10. Upon review of various vouchers Respondent submitted to the courts for work occurring in 2016 and 2017, it appears that Respondent billed a substantial amount of travel to and from a location in Cameron, West Virginia, instead of to and from his Marshall County residence, which is closer to most of the venues involved. Notably, the address of record for Respondent with the West Virginia State Bar and also used by Respondent for payments and the delivery of mail is a Post Office Box in Moundsville, West Virginia.

¹As of February 2020, Respondent has not been indicted or otherwise criminally charged by the State of West Virginia.

11. The address Respondent used for billing travel is located on the second floor of a Masonic Lodge in Cameron, West Virginia. Respondent is a Mason and a member of that lodge. Upon inspection of that location, an investigator viewed a space not equipped or used as office space. No phones or computer equipment were seen and the room was reportedly in a state of disrepair and shambles.
12. The logistics make it unlikely that Respondent would go from his residence to an office in Cameron, which is not equipped for use as an office, and then make a trip north or to the Northern Regional Jail in Moundsville, places near his residence, and then return to the Cameron address again before returning home. However, according to records, a round trip was billed to and from Cameron in every instance.²
13. In the records supplied by Judge Cramer, Respondent billed 242.4 such trips, taking 527.7 hours. Respondent also claimed a mileage reimbursement for every such trip. The evidence does not support that this represents Respondent's actual travel.
14. In addition, the vouchers included in Mr. Eddy's complaint show that Respondent, almost exclusively, billed 0.5 hours for waiting in court.
15. Respondent also submitted billing for a significant number of hearings as taking 1.0 hour. However, Judge Cramer noted that his hearings in criminal matters rarely last one hour. He said that arraignments are generally three to five minutes at most, pleas between seventeen to twenty minutes almost without exception, Rule 35 hearings three to five minutes, etc.

² Travel to the Cameron address from Respondent's residence according to Google Maps is 19.1 miles / approximately 37 minutes.

16. In one matter, Respondent submitted to Judge Cramer a voucher for *State of West Virginia v. Tia Edmund*, which he incorrectly labeled as case 17-F-88. The actual case number for the matter is 16-F-88. On November 16, 2016, Respondent listed his time as 1.0 hours for hearing and 0.5 hours for waiting. Judge Cramer stated that upon his review, Respondent did not appear in Court on that day for any client. In addition, Respondent billed over 28 hours on the matter purportedly after sentencing. Judge Cramer, however, recalled that this case presented no special issues and he could not fathom what Respondent would be doing for this time, apart from a typical one-page Rule 35 modification motion.
17. In another matter, *In re: J.R. A.R. A.V.*, 16-JA-1, 2, 3, Respondent billed 0.5 hours for waiting in Court and 1.3 hours for a hearing on May 9, 2016. Judge Cramer's inquiry revealed that the hearing was scheduled for 11:00 a.m. and began at 10:56 a.m., so no waiting time was involved. Judge Cramer's inquiry further revealed that the hearing lasted seventeen minutes.
18. In the same matter, Respondent billed 0.5 hours for waiting in Court and 1.2 hours for a hearing on June 9, 2016. Judge Cramer's inquiry revealed that the hearing was scheduled for 10:30 a.m. and began at 10:28 a.m., so no waiting involved. Judge Cramer's inquiry further revealed that the hearing lasted nine minutes.
19. Judge Cramer's inquiry revealed multiple other inconsistencies of this nature regarding Respondent's billing.

20. In the vouchers provided by Judge Cramer, Respondent also submitted a request for reimbursement of 39,350 copies in 138 cases. In fact, the vouchers show that, in several instances, the same number of copies are made throughout the case on several occasions. For instance, in the *Edmund* matter, Respondent billed for copying 1,221 pages three times. The Court's file on this matter is less than 100 pages.
21. In another case also involving Ms. Edmunds, a misdemeanor numbered 17-M25M-00106, Respondent submitted a voucher for \$2,852.80. This matter was not tried and its resolution was not appealed. Respondent claimed visits to this client at the Regional Jail in Moundsville on six occasions for which he charged 1.3, 2.1, 1.7, 1.4, 2.3, and 1.8 hours respectively, and charged for travel in every instance from the Cameron address. He also billed for 2,242 copies on two occasions in the matter. The Magistrate Court file for this case is 52 pages.
22. Respondent also submitted billing for 253 hours of time for a "digital backup," an administrative task that should not be compensable. However, the number of documents in the cases involved do not support such an extended effort.
23. Indeed, the vouchers submitted by Respondent in various cases also reflect time that appeared to be "value billing," i.e., it appeared that the amounts billed may have been based on the value of the service instead of the actual time spent performing the tasks.
24. By letter dated December 26, 2018, the ODC advised Respondent that it had opened a complaint based upon the information listed above and asked that he provide a response regarding the accuracy of the referenced billing.

25. After requesting and receiving an extension of time to file a response, in his verified response received February 27, 2019, Respondent stated that under the time of the billing he was under a great deal of stress due to his own health issues and the health issues of family members.
26. Respondent stated in his response that he felt all of his traveling time was appropriate, and that he had been advised by other lawyers to always bill travel from his office address.
27. With regard to the *Edmunds* case, Respondent stated that the printing was upon request of the client of the discovery CD provided from the State, which included a “data dump” of the client’s cell phone. Respondent asserted that it was a very large file and took hours to print. Respondent did not explain why three copies were necessary.
28. Respondent attributed his billing for waiting as 0.5 hours due to appearing early for hearings. The governing statute, however, does not permit time “awaiting hearing or trial” to be payable as “in court” time as Respondent billed.
29. West Virginia Code § 29-21-13a(a) (2008)³ requires panel counsel for the PDS to “maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients[.]” Subsection (d) of that statute provides that panel counsel “shall be compensated . . . for actual and necessary time expended for

³ This statute was amended during the 2019 Legislative Session. However, because the conduct at issue herein took place prior to the amendment, the former statute is cited and applied.

services performed and expenses incurred[.]” *Lawyer Disciplinary Board v. Cooke*, 239 W.Va. 40, 49, 799 S.E.2d 117, 126 (2017).

30. “West Virginia Code § 29-21-14 [1981], which governs state payment of counsel fees for indigent criminal defendants, envisages a system where each client is proportionately billed according to the time spent actually representing that client; consequently, billing for more hours than are actually worked is duplicative billing that is clearly contrary to the system envisaged by the legislature.” Syllabus Point 1, *Frasher v. Ferguson*, 177 W.Va. 546, 355 S.E.2d 39 (1987).
31. Because Respondent has misrepresented his actual and necessary time expended for services performed in filings before the appointed circuit judge and/or appointing tribunal, Respondent has violated Rule 3.3(a)(1) of the Rules of Professional Conduct, provided as follows:

Rule 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer[.]

32. Because Respondent engaged in improper and unsubstantiated billing with regard to cases in which he was appointed to represent indigent clients on behalf of the PDS, Respondent has violated Rule 1.5(a) and Rule 8.4(c) and (d) of the Rules of Professional Conduct, which provide:

Rule 1.5. Fees

(a) A lawyer’s fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services, and

(8) whether the fee is fixed or contingent.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

* * *

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice[.]

33. Because Respondent knowingly deceived and intentionally made false statements to the Court(s), to PDS, and others with regard to his billing, he has violated Rule 8.4(c) of the Rules of Professional Conduct, which provides:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * *


(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

* * *

Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a

violation of the Rules of Professional Conduct and has issued this Statement of Charges. As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within thirty days of service of this Statement of Charges by the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

STATEMENT OF CHARGES ORDERED on the 6th day of March, 2020, and **ISSUED** this the 10th day of March, 2020.


Amy C. Crossan, Chairperson
Investigative Panel
Lawyer Disciplinary Board